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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/754,444	01/09/2004	Roger A. Stern	021827-000400US	7988
21971	7590	10/20/2005		
WILSON SONSINI GOODRICH & ROSATI 650 PAGE MILL ROAD PALO ALTO, CA 94304-1050			EXAMINER TOY, ALEX B	
			ART UNIT 3739	PAPER NUMBER

DATE MAILED: 10/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/754,444	STERN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Alex B. Toy	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) 1-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-46 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-33, drawn to an electrode deployment apparatus, classified in class 606, subclass 41.
- II. Claims 34-46, drawn to a method for deploying electrodes to treat tissue in a body lumen, classified in class 128, subclass 898.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus as claimed can be used to practice another and materially different process such as treating tissue other than tissue in a body lumen – e.g. cardiac or uterine tissue – since a lumen is defined as the open space of a tubular organ.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

This application contains claims directed to the following patentably distinct species of the claimed invention:

Species I, the embodiment of the electrode deployment apparatus shown in Figs. 2-3.

Upon election of Species I, the applicant is further required to elect one of the following subspecies:

Subspecies I A, the embodiment of the electrode pattern shown in Fig. 6a.

Subspecies I B, the embodiment of the electrode pattern shown in Fig. 6b.

Subspecies I C, the embodiment of the electrode pattern shown in Fig. 6c.

Subspecies I D, the embodiment of the electrode pattern shown in Fig. 7a.

Subspecies I E, the embodiment of the electrode pattern shown in Fig. 7b.

Subspecies I F, the embodiment of the electrode pattern shown in Fig. 7c.

Subspecies I G, the embodiment of the electrode pattern shown in Fig. 7d.

Species II, the embodiment of the electrode deployment apparatus shown in Figs. 4-5.

Species III, the embodiment of the electrode deployment apparatus shown in Fig. 8.

Species IV, the embodiment of the electrode deployment apparatus shown in Fig. 9.

In the "Brief Description of the Drawings," applicant asserts that Fig. 9 is an enlarged cross-sectional view of the device of Fig. 8 (pg. 9, ln. 8-9). The specification, however, describes Fig. 9 as an alternative embodiment, wherein the non-overlapping support 160 may also comprise one or more supports that are attached at their midpoint

172 (pg. 21, ln. 9-11). Given this description and the corresponding details shown in Fig. 9 that differ from Fig. 8, Fig. 9 is a patentably distinct species from Fig. 8.

Species V, the embodiment of the electrode deployment apparatus shown in Figs. 10-11.

Species VI, the embodiment of the electrode deployment apparatus shown in Fig. 12.

Species VII, the embodiment of the electrode deployment apparatus shown in Fig. 13.

Species VIII, the embodiment of the electrode deployment apparatus shown in Figs. 14a-14b.

In the "Brief Description of the Drawings," applicant asserts that Fig. 14b is a perspective cross-sectional view of the device of Fig. 10 in a compressed configuration (pg. 9, ln. 20-21). Fig. 10, however, clearly does not have a central shaft 180 as shown in Fig. 14b. Conversely, Fig. 14b clearly does not have container 162 for support 160 as shown in Fig. 10. Therefore, Fig. 14b is patentably distinct species from Fig. 10.

Species IX, the embodiment of the electrode deployment apparatus shown in Fig. 15a.

Species X, the embodiment of the electrode deployment apparatus shown in Fig. 15b.

Species XI, the embodiment of the electrode deployment apparatus shown in Fig. 15c.

Species XII, the embodiment of the electrode deployment apparatus shown in Fig. 16.

Species XIII, the embodiment of the electrode deployment apparatus shown in Fig. 17.

Species XIV, the embodiment of the electrode deployment apparatus shown in Fig. 18.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are held to be generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the

case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

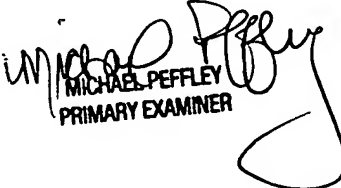
Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alex B. Toy whose telephone number is (571) 272-1953. The examiner can normally be reached on Monday through Friday, 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AT AT  
10/14/05

  
MICHAEL PEFFLEY  
PRIMARY EXAMINER